

**Hearing Date and Time: January 27, 2010 at 2:00 p.m.,  
Objection Date and Time: January 21, 2010 at 4:00 p.m.**

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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In re:  
GLOBAL CONTAINER LINES LTD., *et al.*

Debtors. Jointly Administered

Chapter 11  
Case No. 09-78585  
(Jointly Administered with 09-78584  
Case Nos. through 09-78590)

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**SEACASTLE CONTAINER LEASING LLC RESPONSE TO  
DEBTORS' MOTION (NOW)  
TO REJECT SEACASTLE LEASES AND CONTAINERS**

Seacastle responds to debtor's rejection motion (Docket No. 86), repeating and reasserting Seacastle's December 7, 2009 Motion directing Global to surrender Seacastle's containers (Docket No. 46).

Only now does Global say it doesn't need the Seacastle containers, although it admittedly has used many of them post-petition - *see*, Exhibit A hereto, the list of "active" containers which Global used post-petition, shipboard "stuffed with cargo."

If there were any Seacastle leases remaining post-petition to reject, 11 U.S.C. § 365 unequivocally requires Global to pay for Global's post-petition use and return of these containers. As Seacastle has pointed out, however, "use" of containers isn't only shipboard: it is having the containers available for use, given that a containerized vessel requires a volume of containers three times its capacity (in general, one container being unloaded ashore, one container aboard ship, one container awaiting loading) to operate. "Use" that Global must pay for post-petition, is not simply of the 75 containers that Exhibit A lists, but of all of Seacastle's containers that Global has insisted on holding, post-petition.

As Seacastle on December 7<sup>th</sup> set out, however, Seacastle well before the petition date terminated the leases. There were at the time of the petition, no leases to reject: Seacastle had terminated them. Global after termination, pre- or post-petition, had no right whatsoever to hold the containers or use them. Global's failure to release the Seacastle containers constituted a post-petition trespass to and conversion<sup>1</sup> of Seacastle's containers, making Global liable to post-petition damages. "[C]laims for [post-petition] torts may be accorded priority as an administrative expense." *SunTrust Bank v. Roberson (In re Baseline Sports, Inc.)*, 393 B.R. 105, 130 (E.D. Va. 2008). *See also Reading Co. v. Brown*, 391 U.S. 471, 477–85 (1969); *Pa. Dept' of Env'tl. Res. v. Tri-State Clinical Labs, Inc.*, 178 F.3d 685, 691 (3d Cir. 1999); *Ala. Surface Mining Comm. v. N.P. Mining Co.*, 963 F.2d 1449, 1453 (11th Cir. 1992); *Kapernekas v. Continental Airlines, Inc. (In re Continental Airlines)*, 148 B.R. 207, 213 (D. Del. 1992).

It is undisputed that Seacastle since well before the petition date has been demanding Global, directly and through Global's counsel here, to release and return Seacastle's containers. Only now - despite those months of demand - has Global relented. Global's retention and use of Seacastle's containers without paying for them is and was wrongful. Global owes Seacastle damages, in amounts to be determined, as Seacastle now attempts to recover its containers, which Global wrongfully used and held. This Court certainly should, at the earliest time, confirm Seacastle's termination of its leases, reserving the question of the damage that Global

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<sup>1</sup> "Conversion occurs when a defendant exercises unauthorized dominion over personal property in interference with a plaintiff's legal title or superior right of possession." *LoPresti v. Terwilliger*, 126 F.3d 34, 41 (2d Cir. 1997). More relevant to the present case, "[w]hen possession of property is lawful at the outset, as it was here, *conversion occurs when the possessor refuses the owner's demand for return of the property.*" *Snell v. Short*, 544 F.2d 1289, 1291 (5th Cir. 1977) (emphasis added).

must pay for Global's wrongful use, and refusal to return and release, Seacastle's containers.

WHEREFORE, Seacastle respectfully requests that in response to the Global rejection motion (Docket No. 86), as well as to Seacastle's original motion (Docket No. 46) this Court order as follows:

(1) Declaring that inasmuch as Global's leases with Seacastle were properly terminated bybefore the filing of Global's petition, there were no existing leases at the time of the petition filing, none to "reject" and therefore no interest in such leases could be part of Debtor's estate;

(2) Directing that Global cease using Seacastle's containers and return them immediately to Seacastle;

(3) Directing Global to immediately state with detail the locations of Seacastle's containers and provide a full accounting of its use of Seacastle's containers since the Leases were terminated;

(4) Entering other and further proper relief in Seacastle's favor.

Dated: January 20, 2010.

Respectfully Submitted,

/s/ J. Stephen Simms

J. Stephen Simms

Simms Showers LLP

20 South Charles Street

Suite 702

Baltimore, Maryland 21201

Telephone 410-783-5795

Facsimile 410-510-1789

[jssimms@simmsshowers.com](mailto:jssimms@simmsshowers.com)

Counsel for Creditor Seacastle Container Leasing  
LLC ("Seacastle")

**CERTIFICATE OF SERVICE**

I hereby certify that on January 20, 2010 I caused the foregoing to be filed on the Court's CM/ECF system for service on all record counsel and the United States Trustee.

/s/ J. Stephen Simms

# Exhibit A